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SENATE BILL 465

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

John Pinto

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE NMSA 1978
CONCERNING THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT
FUND; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2H-1 NMSA 1978 (being Laws 2008,
Chapter 89, Section 1) is amended to read:

"7-2H-1. LEGISLATIVE FINDINGS.--

A. Native Americans have had a long history of
serving their country through active duty in the armed forces
of the United States during periods of both war and peace and
have made great sacrifices in serving their country through
active duty in the military during periods of war and peace.

B. Native American veterans domiciled ~~on~~ within
the boundaries of their tribal lands or their spouse's tribal

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1 lands during their periods of active military service may have
2 been exempt from paying state personal income taxes on their
3 military [~~income~~] pay, but may have had state personal income
4 taxes improperly withheld from their military [~~income~~] pay.

5 C. Native American veterans now are barred by the
6 state statute of limitations from claiming refunds of state
7 personal income taxes that may have been improperly withheld
8 from their military [~~income~~] pay when they were domiciled
9 within the boundaries of their tribal lands or their spouse's
10 tribal lands during the period of their active military duty,
11 and even if not barred by the statute of limitations, the
12 passage of time extending to decades will make it difficult for
13 many Native American veterans to meet strict standards of proof
14 that they are entitled to a refund of improperly withheld state
15 personal income taxes.

16 D. It is incumbent upon the state to ensure that it
17 was not unjustly enriched by the improper withholding of state
18 personal income taxes from Native American veterans who were
19 domiciled within the boundaries of their tribal lands or their
20 spouse's tribal lands during the period of their active
21 military duty, and the state should implement a feasible means
22 of refunding to Native American veterans any state personal
23 income taxes that were improperly withheld from military pay
24 while they were domiciled within the boundaries of their tribal
25 lands or their spouse's tribal lands during the period of their

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1 active military duty."

2 Section 2. Section 7-2H-2 NMSA 1978 (being Laws 2008,
3 Chapter 89, Section 2) is amended to read:

4 "7-2H-2. DEFINITIONS.--As used in [~~this act:~~

5 ~~A. "department" means the veterans' services~~
6 ~~department;~~

7 ~~B.] Chapter 7, Article 2H NMSA 1978:~~

8 A. "fund" means the Native American veterans'
9 income tax settlement fund [and

10 ~~C. "secretary" means the secretary of veterans'~~
11 ~~services]; and~~

12 B. "intertribal veterans task force" means a group
13 of Native American veterans of the United States armed forces,
14 including five representatives of the Navajo Nation, one
15 representative of the Mescalero Apache Tribe, one
16 representative of the Jicarilla Apache Nation and three
17 representatives of the nineteen Indian pueblos in New Mexico,
18 one of whom shall represent the Pueblo of Zuni."

19 Section 3. Section 7-2H-3 NMSA 1978 (being Laws 2008,
20 Chapter 89, Section 3) is amended to read:

21 "7-2H-3. NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT
22 FUND--CREATED--PURPOSE--APPROPRIATIONS.--

23 A. The "Native American veterans' income tax
24 settlement fund" is created as a nonreverting fund in the state
25 treasury and shall be administered by the taxation and revenue

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1 department. The fund shall consist of money that is
2 appropriated or donated or that otherwise accrues to the fund.
3 Money in the fund shall be invested by the state investment
4 officer in the manner that land grant permanent funds are
5 invested pursuant to Chapter 6, Article 8 NMSA 1978. Income
6 from investment of the fund shall be credited to the fund.

7 B. The taxation and revenue department shall, in
8 consultation with the intertribal veterans task force,
9 establish procedures and adopt rules as required to administer
10 the fund and to make settlement payments from the fund as
11 approved by the [~~secretary~~] legislature.

12 C. Money in the fund is appropriated to the
13 taxation and revenue department to make settlement payments to
14 Native American veterans who were domiciled within the
15 boundaries of their tribal lands or their spouse's tribal lands
16 during the period of their active military duty and had state
17 personal income taxes improperly withheld from their military
18 pay. No settlement payment shall be made until the Indian
19 affairs department has completed and presented to the
20 appropriate interim legislative committee a comprehensive
21 independent study regarding New Mexico state personal income
22 taxes that may have been withheld during the period 1942
23 through 1978 from the military income of Native American
24 veterans when they were domiciled within the boundaries of
25 their tribal lands or their spouse's tribal lands during the

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1 period of their active military duty. Money shall be disbursed
2 from the fund only on warrant of the secretary of finance and
3 administration upon vouchers signed by the secretary of
4 ~~[veterans' services]~~ taxation and revenue or the secretary's
5 authorized representative. Any unexpended or unencumbered
6 balance remaining in the fund at the end of a fiscal year shall
7 not revert to the general fund."

8 Section 4. Section 7-2H-4 NMSA 1978 (being Laws 2008,
9 Chapter 89, Section 4) is amended to read:

10 "7-2H-4. DUTIES OF THE SECRETARY.--

11 ~~[A. The secretary shall conduct a study in~~
12 ~~cooperation with the taxation and revenue department to~~
13 ~~determine whether Native American veterans who were domiciled~~
14 ~~on tribal lands during the period of their active military duty~~
15 ~~had state personal income taxes improperly withheld from their~~
16 ~~pay and if so, to determine the amount of state personal income~~
17 ~~taxes improperly withheld and the number and identity of Native~~
18 ~~American veterans or their survivors affected by the improper~~
19 ~~withholding of state personal income taxes.]~~

20 A. The secretary of veterans' services shall assist
21 and cooperate with the taxation and revenue department and the
22 intertribal veterans task force to conduct as thoroughly as
23 possible a survey to determine the number and identity of
24 Native American veterans or their survivors affected by the
25 improper withholding of state personal income taxes.

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1 B. The secretary of taxation and revenue and the
2 secretary of veterans' services, in consultation with the
3 intertribal veterans task force, shall promulgate rules for a
4 state program to compensate Native American veterans or their
5 survivors for state personal income taxes improperly withheld
6 from military [~~income~~] pay while on active military duty and
7 domiciled within the boundaries of the veteran's or the
8 veteran's spouse's tribal lands.

9 C. The secretary of taxation and revenue shall
10 report to the appropriate interim legislative committee no
11 later than October 1 of each year regarding estimates of the
12 amount of state personal income taxes improperly withheld from
13 the military pay of Native American veterans domiciled on their
14 respective tribal lands, the number of Native American veterans
15 or their survivors affected by the improper withholding of
16 state personal income taxes, total expenditures from the fund
17 for the previous fiscal year and the anticipated appropriations
18 to the fund needed to pay for settlements to be entered into
19 for the next fiscal year."

20 Section 5. A new Section 7-2H-5 NMSA 1978 is enacted to
21 read:

22 "7-2H-5. [NEW MATERIAL] INTERTRIBAL VETERANS TASK FORCE.--
23 Each Indian nation, tribe or pueblo specifically entitled to
24 membership on the intertribal veterans task force pursuant to
25 Subsection B of Section 7-2H-2 NMSA 1978 shall designate its own

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1 task force members. The all Indian pueblo council shall
2 designate two pueblo members to represent eighteen of the Indian
3 pueblos of New Mexico, not including the Pueblo of Zuni. Native
4 American veterans shall be consulted in the establishment of
5 criteria for the designation of task force members."

6 Section 6. APPROPRIATIONS.--

7 A. Three hundred thousand dollars (\$300,000) is
8 appropriated from the general fund to the Indian affairs
9 department for expenditure in fiscal year 2010 for an
10 independent study, including legal research, regarding New
11 Mexico state personal income taxes that may have been withheld
12 during the period 1942 through 1978 from the military income of
13 Native American veterans when they were domiciled within the
14 boundaries of their tribal lands or their spouse's tribal lands
15 during the period of their active military duty. The Indian
16 affairs department, in collaboration with the intertribal
17 veterans task force, shall contract with independent legal
18 counsel to participate in the study and conduct legal research
19 required pursuant to this act. The study required pursuant to
20 this subsection shall be completed and presented to the
21 appropriate interim legislative committee no later than October
22 1, 2009. Any unexpended or unencumbered balance remaining at
23 the end of fiscal year 2010 shall revert to the general fund.

24 B. An appropriate amount based upon the conclusions
25 of the study conducted pursuant to Subsection C of Section

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1 7-2H-3 NMSA 1978 is appropriated from the general fund to the
2 Native American veterans' income tax settlement fund for
3 expenditure in fiscal year 2010 and subsequent fiscal years to
4 carry out the purposes of the fund. Any unexpended or
5 unencumbered balance remaining at the end of a fiscal year
6 shall not revert to the general fund.

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